

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

|                               |   |                            |
|-------------------------------|---|----------------------------|
| COMMODITY FUTURES TRADING     | ) | CASE NO.1:04CV0016         |
| COMMISSION,                   | ) |                            |
|                               | ) |                            |
| Plaintiff,                    | ) | JUDGE CHRISTOPHER A. BOYKO |
|                               | ) |                            |
| Vs.                           | ) |                            |
|                               | ) |                            |
| ROSS ERSKINE, AND GOROS, LLC, | ) | ORDER                      |
|                               | ) |                            |
| Defendant.                    | ) |                            |

**CHRISTOPHER A. BOYKO, J:**

This matter is before the Court on Defendants' Motion to Tax Costs (ECF Dkt# 101).

For the following reasons, the Court denies Defendants' Motion.

On April 19, 2006, this Court granted summary judgment, in part, for Defendants, finding Plaintiff did not have jurisdiction under 7 U.S.C. §2a(1)(A) over Defendants' transactions.

Defendants have moved the Court to tax costs under Fed. R. Civ. P. 54. Rule 54 states in pertinent part:

**“(d) Costs; Attorneys' Fees.**

**(1) Costs Other than Attorneys' Fees.** Except when express provision therefor is made either in a statute of the United States or in these rules, costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the United

States, its officers, and agencies shall be imposed only to the extent permitted by law. Such costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court."

Plaintiff contends Defendants have improperly moved for costs under an inapplicable rule, as 28 U.S.C. §1919 controls in cases where the Court has dismissed an action for lack of jurisdiction. 28 U.S.C. §1919 states:

"Whenever any action or suit is dismissed in any district court, the Court of International Trade, or the Court of Federal Claims for want of jurisdiction, such court may order the payment of just costs."

Courts have held when a case is dismissed for want of jurisdiction 28 U.S.C. §1919 controls over the more general Rule 54. See *Ericsson GE Mobile Communications v. Motorola Communications & Electronics*, 179 F.R.D. 328, 331(N.D. Ala 1998).

As this Court expressly dismissed Plaintiff's action for lack of jurisdiction, this Court holds 28 U.S.C. §1919 controls the taxing of costs. Therefore, Defendant's Motion is denied as improperly brought under Fed. R.Civ. P. 54.

IT IS SO ORDERED.

12/6/06  
Date

Christopher A. Boyko  
CHRISTOPHER A. BOYKO  
United States District Judge